

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

VAN VOORST DAIRY, L.L.C.
Sioux Center, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2008-AFO- ~~20~~

TO: James A. Van Voorst, Registered Agent
Van Voorst Dairy, L.L.C.
3941 Dove Avenue
Sioux Center, Iowa 51250

I. SUMMARY

This administrative consent order is entered into between Van Voorst Dairy, L.L.C. (Van Voorst Dairy) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issue of improper land application of manure which resulted in water quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jennifer Christian, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand – Gateway North, Suite E17
Spencer, Iowa 51301-2200
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director, Iowa Dept. of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN VOORST DAIRY, L.L.C.

III. STATEMENT OF FACTS

1. Van Voorst Dairy is a 1,000 head dairy confinement facility with an earthen manure storage basin. The facility is located at 3941 Dove Avenue in Sioux Center, Iowa (SE ¼ of the NE ¼ of Section 1, Eagle Township, Sioux County).

2. On March 11, 2008, DNR Field Office 3 received an anonymous complaint alleging that Van Voorst Dairy was spreading liquid manure near Six Mile Creek and the application was leaving large puddles. The complainant stated the application took place late in the day on March 10, 2008. On March 12, 2008, DNR Field Office 3 received an anonymous complaint alleging that Van Voorst Dairy was spreading liquid manure along Six Mile Creek. The complainant stated that separation distances were not being met.

3. On March 13, 2008, Jennifer Christian, DNR Field Office 3 environmental specialist, investigated the complaints. Ms. Christian spoke to Jim Van Voorst and he confirmed that three of his employees applied liquid manure from the Van Voorst Dairy facility on March 11 and March 12 to a field located in the SW ¼ of Section 19, Center Township, Sioux County. The field slopes to the south toward Six Mile Creek. Mr. Van Voorst stated he was unaware that his employees applied the manure next to the creek. Ms. Christian observed that the manure had been applied directly next to Six Mile Creek and did not comply with the 200 foot separation distance. Ms. Christian also noted the manure was entering the creek from the field. Ms. Christian explained to Mr. Van Voorst the required separation distance requirements for application of manure near water surfaces and that there had been a violation of the requirements since manure was surfaced applied directly next to the creek. Ms. Christian took photographs of the area, conducted field tests, and collected laboratory samples. The field tests indicated the following:

Location	Characteristics	Ammonia	Temperature	Dissolved Oxygen	pH
Application Field Runoff	Dark brown, foamy, manure odor	20 ppm	13°C	8 mg/L	8
Dove Ave. Bridge (downstream of runoff)	Murky, foamy, manure odor	7.5 ppm	2°C	8 mg/L	7.7
K-30 Bridge Tributary (upstream tributary of creek)	Murky, some foam	5 ppm	3.5°C	6.5 mg/L	7.5
K-30 Bridge South (upstream of runoff)	Murky, some foam	2.5 ppm	3.5°C	7.5 mg/L	7.8

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN VOORST DAIRY, L.L.C.

Dogwood Ave. Bridge (1 mile downstream of runoff)	Murky, some foam	7.5 ppm	1.5°C	7 mg/L	7.9
440 th Street Culvert (upstream tributary of creek)	Murky	1 ppm	7°C	6.5 mg/L	7.6

The laboratory samples indicated the following:

Location	Total Kjeldahl Nitrogen	Nitrate + Nitrite Nitrogen	Ammonia Nitrogen
Application Field Runoff	21 mg/L	2.8 mg/L	12 mg/L
Dove Ave. Bridge	16 mg/L	10 mg/L	6.4 mg/L
K-30 Bridge Tributary	17 mg/L	11 mg/L	6.8 mg/L
K-30 Bridge South	8.1 mg/L	10 mg/L	2.9 mg/L
Dogwood Ave. Bridge	16 mg/L	9.7 mg/L	6.5 mg/L
440 th Street Culvert	3.1 mg/L	5.5 mg/L	0.51 mg/L

4. On April 22, 2008, DNR issued a Notice of Violation letter to Van Voorst Dairy for the violations discovered during Ms. Christian's investigation on March 13, 2008. The letter cited the following violations: failure to meet required manure application separation distance to a water source (567 IAC 65.3(3)) and the discharge of manure into a water of the state (567 IAC 65.2(7) and 455B.186). The letter informed Van Voorst Dairy the violations were being referred for further enforcement.

5. Van Voorst Dairy had a previous violation of the separation distance requirement. On January 30, 2006, DNR Field Office 3 investigated a complaint that Van Voorst Dairy was applying manure too close to houses. DNR Field Office 3 discovered that Van Voorst Dairy applied manure too close to a residence and failed to comply with the 750 feet separation distance requirement. Van Voorst Dairy was issued a Notice of Violation letter for this violation.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN VOORST DAIRY, L.L.C.

2. 567 IAC 65.3(3)(g) states that no person shall apply manure on land within 200 feet from a designated area. 567 IAC 65.1 defines designated area as a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface tile inlet, drinking water well, designated wetland, lake, or water source. Van Voorst Dairy applied manure directly next to Six Mile Creek and did not comply with the 200 feet separation distance. The above-mentioned facts indicate a violation of this provision.

3. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. The land application of manure by Van Voorst Dairy resulted in a manure discharge from the field to Six Mile Creek. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 65.2(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. The land application of manure by Van Voorst Dairy resulted in a manure discharge from the field to Six Mile Creek. The above-mentioned facts indicate a violation of this provision.

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. Ms. Christian observed manure entering the creek and noted murky water with a manure odor at the runoff location. Additionally, field tests and laboratory results indicate high levels of pollutants that could be toxic to animal or plant life. The above-facts disclose a violation of one or more of these criteria.

6. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Ms. Christian found evidence of the discharge of untreated pollutants into water of the state. The above-facts indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders and Van Voorst Dairy agrees to do the following:

1. Van Voorst Dairy shall pay a penalty of \$4,000.00 to the DNR within 30 days from the date the Director signs this administrative consent order.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN VOORST DAIRY, L.L.C.

VI. PENALTY

1. Iowa Code section 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$4,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Van Voorst Dairy saved money and time in failing to comply with the separation distance requirements when land applying the manure. However, the economic benefit is likely minimal; therefore no amount is being assessed for economic benefit.

Gravity of the Violation One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. Van Voorst Dairy failed to comply with the separation distance requirements and this failure led to manure being discharged into a water of the state. The discharge of manure caused water quality violations. Based on the above considerations, \$2,500.00 is assessed for this factor.

Culpability All producers have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Van Voorst Dairy should have been aware of the increased risk of pollution due to its failure to comply with the separation distance requirements. Additionally, Van Voorst Dairy has been cited for a previous violation of the separation distance between a manure application and a residence. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Van Voorst Dairy. For that reason, Van Voorst Dairy waives the right to appeal this administrative consent order or any part thereof.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: VAN VOORST DAIRY, L.L.C.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 22 day of
June, 2008.


VAN VOORST DAIRY, L.L.C.

Dated this 23 day of
June, 2008.

Facility #59625; DNR Field Office 3; Kelli Book; Ken Hessenius; Gene Tinker; EPA; VI.C.1, VIII.D.1, and VIII.D.2.b